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STATE OF CALIFORNIA
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Thomas W. Hayes
Auditor General

August 29, 1988

P-763

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 448
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Department of Social Services (DSS) cited unproven allegations and deficiencies that were already corrected to support its requirement that the Boys' and Girls' Club of Escondido (club) remove its two top administrators from the club's licensed child care programs. Also, the State Department of Education (SDE) relied, in part, on the same DSS information when it specified that the club not permit the two administrators to return to the management of the club's child development program which is one of its licensed programs. The allegations specified that the club had not always complied with licensing requirements and had attempted to avoid detection of licensing violations by busing children from the club. In addition, the club did not always comply with the terms of its contract with the SDE to provide child development services. Although some allegations were proven, when the State cited the club for deficiencies, the club took the action necessary to correct them.

Believing that the DSS and the SDE had treated them and the club unfairly, the administrators whom the DSS had required be removed asked both the DSS and the SDE to review their actions related to the case and determine whether state employees were involved in any misconduct. After an internal investigation, the DSS found that its district manager's requirement was inappropriate and not based on substantiated evidence. However, the DSS concluded that it lacked sufficient evidence to warrant formal disciplinary action against the district manager. Similarly, the SDE found that its action regarding the club's administrators was inappropriate and also concluded that disciplinary action against its employees was unwarranted.

Honorable Bruce Bronzan, Chairman

Members, Joint Legislative

Audit Committee

August 29, 1988

Page 2

Background

The Statutes of 1980, Chapter 798, establishes the Child Care and Development Services Act, assigning the SDE the responsibility for promoting, developing, and providing child care in the absence of parents. As a result of this act, the SDE established its child development program, which provides part-time and full-time child care and educational services to children from low-income and other families with special needs. The state and federal governments subsidize this care according to the families' eligibility. To deliver and subsidize these services, the SDE contracts yearly with public and private agencies to operate the program. In fiscal year 1985-86, the State spent approximately \$305 million on the child development program. The State estimates it will spend approximately \$317 million on the program in fiscal year 1988-89.

The Child Care and Development Services Act initially required the superintendent of public instruction to license all facilities contracting with the SDE to provide child care unless the facility was already licensed by the State or was exempt from licensing. However, in 1984, the DSS became responsible for licensing these child care facilities. The purpose of licensing is to ensure that facilities providing care and supervision meet standards for the health and safety of those individuals served.

Scope and Methodology

The DSS licenses approximately 25,000 day care facilities through 14 district field offices. This review was limited to one of these facilities. The purpose of this audit was to review the DSS' licensing of the club and the SDE's administration of the club's contract for the club's child development program. To determine whether the DSS had correctly licensed the club, we reviewed the DSS' regulations for licensing child care centers and the DSS' records related to the club covering the period from January 1985 through March 1988. We also interviewed current and former employees of the DSS who had knowledge of the case. In addition, to determine whether the DSS' conclusions about club violations were valid, we reviewed the club's attendance, personnel, and other records and interviewed current and former club staff and members of the club's board of directors.

Similarly, to determine whether the SDE had correctly administered its contract with the club, we reviewed SDE records related to the club covering the period from February 1983 through June 1988 and

Honorable Bruce Bronzan, Chairman

Members, Joint Legislative

Audit Committee

August 29, 1988

Page 3

interviewed current and former SDE employees. Further, to determine whether the SDE's conclusions about club violations were valid, we reviewed the minutes from meetings of the club's board of directors, and we reviewed other club records and interviewed club staff and members of the club's board of directors.

Finally, we examined both the DSS' and the SDE's internal reviews of their actions related to the club and their employees' conduct. In addition, we met with the assistant executive officer of the State Personnel Board. We also obtained documentation of what the DSS and the SDE have done to follow up on the results of their respective reviews.

Licensing Regulations Affecting the Club

The major allegations against the club related to violations of licensing regulations. Specifically, the allegations stated that the club was overcrowded, had inadequate supervision, and attempted to avoid detection of these conditions by busing children from the club.

When the SDE first issued a license to the club in February 1983, it had considered several factors in determining the club's maximum capacity, including the amount of indoor activity space and the number of sinks and toilets available to the children. The club had indoor space to accommodate 428 children, toilets to accommodate 184 children, and sinks to accommodate 154 children. Because the number of sinks was the most restrictive element, the SDE established for the club a maximum capacity of 154 children.

In addition to establishing a maximum capacity for the club, the SDE stated that it would clarify staffing requirements when it issued a license. However, the SDE did not specify these requirements when it first issued a license to the club. Staffing requirements differ for child care programs serving children whom the State subsidizes and those not subsidized by the State. Since the club provided services to both subsidized and unsubsidized children, the SDE noted that it would need to decide if it would count both the subsidized and unsubsidized children before it would clarify the staffing requirements. However, we could find no evidence that the SDE clarified whether staffing requirements would apply to all children in the club or only to those whom the State subsidized. The club's former administrators stated that, because the SDE did not clarify these issues, they assumed that the licensed capacity and staffing requirements applied only to the child development program, not to all of the club's programs.

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
August 29, 1988
Page 4

According to the Education Code, Section 8242, because the largest proportion of the children that the club served was not subsidized by the SDE, the club was not required to meet the staffing standards established in the Education Code. The Education Code, for example, requires that child care centers have one teacher for every 24 children who are five or six years old. Instead, the club was required to comply with the minimum teacher qualifications and staffing requirements outlined in the DSS' licensing regulations. These regulations required that the club have no more than 12 children in attendance for every teacher present or no more than 15 children for every teacher and aide present. Until March 1988, the DSS' regulations focused on centers that cared for infants and preschool children. Although the club did not serve infants or preschool children, it had to comply with those regulations because the State had not yet issued regulations for school-age children. In February 1988, recognizing that school-age children do not require the same level of supervision that infants and preschool children require, the DSS established new regulations for day care centers for school-age children. These regulations permit a teacher and one aide to supervise 28 children--13 children more than the earlier regulations allowed.

In 1984, the DSS became responsible for licensing day care centers, and it first visited the club in January 1985. At that time, the DSS did not find any evidence that the club had exceeded its capacity or was understaffed. The DSS again visited the club on June 6, 1985, and again did not find evidence of these deficiencies. However, the DSS later received a complaint that the club had hidden approximately 60 children from the DSS by busing them away from the club before the inspection on June 6, 1985. In fact, one of the club's former administrators, while at another child development center, had learned that the DSS was going to visit the club and, with the approval of the other former administrator, directed drivers to bus children to another location. When the DSS received the complaint on July 2, 1985, it again visited the club and, counting both subsidized and unsubsidized children, cited the club for exceeding its licensed capacity and for failing to provide adequate supervision. The DSS' licensing evaluator noted that the report was preliminary and incomplete and that the DSS would conduct a follow-up investigation. Although the club disagreed that the licensing requirements applied to all of the children that it served, it promptly reduced the number of children that it allowed in the club and agreed to comply with staffing requirements as specified by the DSS. The club also requested an appeal of the DSS' findings.

Honorable Bruce Bronzan, Chairman

Members, Joint Legislative

Audit Committee

August 29, 1988

Page 5

On July 29, 1985, without further investigation, the manager of the DSS' district office requested the club's board of directors to remove its two top administrators from the licensed program. He made this request because he did not believe that he could rely on information received from the administrators and cited the June 6, 1985, busing incident as an example of the administrators' lack of credibility. The club's board of directors did not agree with the district manager's request and did not remove its administrators at that time.

Changes in Licensing Regulations

On August 27, 1985, the DSS concluded that boys' and girls' clubs that were affiliated with the national Boys' and Girls' Club and that did not accept preschool children did not require licenses. The club fell within this definition and was, for a time, exempt from licensing requirements, including the capacity restriction and staffing requirements. However, within three months, on November 21, 1985, the DSS reversed its ruling and established a definition of drop-in recreation facilities, specifying that, in order to be exempt from licensing, the club must allow children, at their will, to come and go at the facility. Under the new definition, the club did not require a license for its recreation programs. However, the club required a license to operate its child care and development programs.

The DSS' Investigation Into Allegations Regarding the Club's Administration

On November 26, 1985, five days after the DSS had reversed its ruling on licensing and had decided that the club needed licensing, the manager of the DSS' district office requested the DSS' audits and investigations unit to independently investigate allegations from citizens and club employees that the administrators of the club permitted overcrowding and exercised poor judgement.

An investigator from the DSS' audits and investigations unit conducted an investigation in December 1985 and January 1986 and, on February 6, 1986, reported that he had substantiated allegations that the club was overcrowded. In addition, he reported that there was evidence that the club was understaffed and used unqualified personnel to staff its day care center. He also reported that his investigation had revealed hazardous and unsanitary conditions at the facility.

The Code of Professional Conduct and Responsibilities for Peace Officers, developed by the California Peace Officers' Association and adopted by the DSS, and DSS policy require DSS investigators to record

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
August 29, 1988
Page 6

all information as truthfully as possible. However, the investigator from the DSS' audits and investigations unit misrepresented some of the results of his investigation in his report. For example, the investigator did not specify that the alleged conditions had existed only before he began his investigation in December 1985. In fact, when the investigator visited the club in January 1986, he found no evidence that the club was exceeding licensed capacity and no evidence of hazardous and unsanitary conditions. The investigator agreed that he should have specified that the cited conditions had existed in the past rather than during his investigation. In addition, although the club exceeded its licensed capacity on every day in our sample of 14 days drawn from July 1984 through July 1985, at no time did the club contain more children than the 428 children that the space could accommodate. The "overcrowding" was determined by a lack of sinks rather than a lack of space. The investigator told us that he probably should have specified that the club exceeded its licensed capacity, not that it was overcrowded.

The investigator said that he had made omissions in his report because he was leaving his position as an investigator with the DSS to take another job and was trying to complete his report quickly. In addition, the investigator's supervisor, who reviewed the report, stated that he did not ensure that the report was completely accurate because he did not consider the conditions to be serious enough to warrant administrative action against the club.

The DSS' Requirement That the Club
Remove Its Administrators From
Its Licensed Programs

The Health and Safety Code, Section 1596.887, specifies that, in deciding to deny, suspend, or revoke a license, the standard of proof shall be a preponderance of evidence. A reasonable person should review all of the available evidence before deciding where the preponderance of the evidence lies. On March 25, 1986, the DSS' district manager wrote a letter to the club in which he summarized the results of the investigator's review. He cited overcrowding, understaffing, unqualified staff, hazardous and unsanitary conditions, poor personnel management, and failure to report serious incidents. He listed examples of each and stated that these examples represented serious deficiencies that the club's board of directors must address.

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
August 29, 1988
Page 7

However, the district manager misreported the investigator's results in some cases and presented some allegations not proven by evidence. For example, the district manager misreported that 18 former and present staff members had stated that the club required all children under the age of 14 to remain at the club unless parents had given written permission for them to leave. In fact, according to the investigator's documents, only 4 of the 18 former and present staff members mentioned that children could not leave the club without parental permission. In addition, the district manager cited as an example of a hazardous condition a prolonged lack of adequate heat in one room during the winter of 1985 and stated that the cold prevented five-year-old children from sleeping. This allegation was not proven by available evidence. Although one witness made this allegation, three other witnesses who worked with five-year-old children during the same period made no mention of the cold room to the investigator when he interviewed them. Further, another individual, whom the investigator did not interview, told us that the room may have been cold but never so cold that children could not sleep. Moreover, the investigator acknowledged that the witness who made this allegation may not have been a reliable witness.

In his March 25, 1986 letter, the DSS' district manager requested the club's board of directors to respond in writing to each deficiency cited by April 1, 1986, and to list the steps that the board would take to assure no future deficiencies. However, the club had resolved the issues of capacity and staffing after the July 1985 inspection, and the district manager provided no evidence that the club had again failed to comply. In addition, the administrators had taken the action necessary to correct other deficiencies when officials pointed them out. For example, the DSS' district manager stated in his letter that the club had required an inadequately licensed staff member to drive the club's school bus. The Vehicle Code, Section 12804, requires bus drivers to have at least a Class 2 driver's license, but Sections 12507 and 12523 of the same code require bus drivers who transport children to or from schools to have an additional certificate. Although drivers for the club had Class 2 licenses, not all of them had the required certificates. However, according to a California Highway Patrol officer, as soon as he brought this deficiency to the attention of the club's administrators, club staff obtained the necessary certificates.

On March 31, 1986, the club responded to the district manager's letter of March 25, 1986. The club did not agree with many of the statements in the district manager's letter but responded to each of his concerns. In the following month, two days before the club's license was to expire, the district manager demanded that the club's board of

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
August 29, 1988
Page 8

directors remove its two top administrators from the club's licensed child care programs. The district manager stated that, if the board did not remove the administrators, he would recommend that the DSS not issue the club a new license. The board of directors then voted to remove the two top administrators from the licensed programs. The DSS' district manager later declared that one of the two administrators could not be involved in licensed programs for two years.

As of June 1, 1988, the DSS licensed the club to operate two child care programs--one subsidized by the State and the other unsubsidized--and the club had no licensing deficiencies. In addition, we found that, on June 1, 1988, the club complied with its capacity limitations and staffing requirements for its child care programs.

The SDE's Requirement That the Club
Not Permit Its Administrators To
Manage Its Child Development Program

The SDE annually reviews contracts to determine whether it will renew the contracts. The SDE stated in April and May 1986 that it would not renew the club's contract for fiscal year 1986-87 because the club did not always comply with the terms of its contract. However, it issued a seven-month contract to the club covering July 1986 through January 1987 on the condition that the club continue to comply with the DSS' requirement that its two top administrators not be involved in its child development program. The contract specified that, if the club failed to comply with this condition, the SDE would terminate its contract. In establishing this condition, the SDE relied, in part, on information contained in the letter from the DSS' district manager to the club summarizing the results of the DSS' investigation. The SDE included this condition in its contract with the club because the DSS had required it for continued licensing and because members of the club's board of directors offered to adhere to it as a solution to the SDE's concerns regarding the club's administration.

The club had not always complied with the terms of its contract with the SDE during fiscal year 1985-86. For example, when the club exceeded its licensed capacity in 1985, it violated a term of its contract with the SDE. Another contract compliance issue concerned unclear documentation of how the club determined the fees some families would be required to pay. In addition, in 1985, the SDE had cited deficiencies in the club's child development program. For example, on September 18 and 19, 1985, the SDE cited as a program weakness that child development staff did not sit, eat, and talk with children while

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
August 29, 1988
Page 9

they were eating and thereby create role models for the children. However, according to an SDE internal audit, the club took prompt action to improve cited deficiencies and to comply with the terms of its contract.

As of June 1, 1988, the club had a contract with the SDE for fiscal year 1987-88 for a child development program. This contract did not contain any restrictions regarding the club's staff. Also, as of that date, the club had no contract deficiencies.

The DSS' and the SDE's Reviews of
Their Actions Related to the Club
and Possible Employee Misconduct

Believing that the DSS and the SDE had treated them and the club unfairly, the club's former top administrators requested both the DSS and the SDE to review their actions related to the club and possible misconduct on the part of state employees. The California Government Code, Section 19570 et seq., specifies 24 types of misconduct for which the State may discipline civil service employees.

The DSS conducted two reviews: the DSS conducted its first review to determine whether its district manager acted appropriately in administering the club's license. The DSS concluded that its district manager's demand that the club remove the administrators from its licensed programs was "inappropriate and not in keeping with his authority as a district manager." The DSS also found no substantive basis for the district manager's prohibiting the administrators from managing licensed child care programs. The DSS conducted its second review to determine whether it had a basis for disciplinary action against its district manager. The DSS found insufficient evidence to warrant formal disciplinary action against the district manager.

The SDE also conducted an internal review of its actions related to the club's contract and the conduct of the SDE's employees. After its review, the SDE concluded that the SDE should not have conditioned the issuance of a child development contract on the assignment or reassignment of specific individuals in a contractor's child development program. However, it also concluded that disciplinary action against its employees was unwarranted.

When the State Personnel Board (board) receives a complaint against a state employee, its staff members gather information related to the complaint and make a recommendation to the board as to whether the board should approve an administrative hearing. The assistant

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
August 29, 1988
Page 10

executive officer of the board reviews and approves all staff recommendations before staff present the recommendations to the board for a decision. We met with the assistant executive officer of the board and reviewed the actions taken by state employees related to the club and its former administrators. He agreed that the evidence was insufficient, based on the information that we presented to him, to warrant disciplinary action against the employees of the DSS and the SDE.

At the time that the DSS' district manager required the club to remove its administrators from its licensed programs, the DSS did not have a procedure for individuals to appeal this type of action. Although, according to a DSS attorney, no statutory law required the DSS to offer these individuals the opportunity to defend themselves against the DSS' action, a number of individuals in similar cases filed and won suits against the State for its failure to provide an administrative appeal process when it required the removal of the individuals from the operation of licensed programs. Consequently, in 1987, the DSS established a procedure that offers individuals an administrative hearing to determine whether a basis exists for the DSS' action against them. In addition, the DSS subsequently directed its district manager to comply with established procedures.

As a result of its internal review, the SDE has drafted procedures for evaluating the status of child development contracts. In addition, the SDE has instructed its personnel that they must not condition the renewal of child development contracts on the removal or reassignment of specific contractor employees.

Conclusion

The Department of Social Services cited unproven allegations and deficiencies that had already been corrected when it required the Boys' and Girls' Club of Escondido to remove its two top administrators from the club's licensed child care programs. Also, the State Department of Education relied, in part, on the same DSS information when it specified that the club not permit the two administrators to return to the club's child development program. The club did not always comply with licensing requirements and attempted to avoid detection of licensing violations by busing children from the club. In addition, the club did not always comply with the terms of its contract with the SDE to provide child development services. However, when the State cited deficiencies, the club took the action necessary to correct them. Finally, we agree with the two departments' conclusions that they had inappropriately prohibited the club's two top administrators from managing the club's licensed programs. Based on our discussion with the assistant executive officer of the State Personnel Board, we

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
August 29, 1988
Page 11

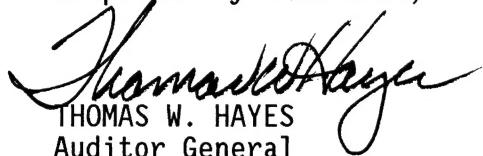
also agree that neither department had sufficient basis for taking disciplinary action against their employees in this matter.

Recommendation

The audits and investigations unit of the Department of Social Services should ensure that investigative reports are accurate and complete.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



THOMAS W. HAYES
Auditor General

The Department of Social Services' response to this report

The State Department of Education's response to this report

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



August 19, 1988

Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

Mr. Clifford Allenby, Secretary, Health and Welfare Agency, has asked me to review and comment on the Office of the Auditor General's draft report regarding the Boys' And Girls' Club of Escondido (Audit Control Number P-763).

We are in agreement with the report's recommendation that our Office of Audits and Investigations should ensure that investigative reports issued by that unit be accurate and complete. Certainly this is, and has been, our policy and expectation. It was unfortunate that in this matter accuracy fell victim to the investigator's haste to conclude his report prior to his job transfer.

We also agree with the report's finding regarding the personnel issue concerning our employee, the district manager of the local licensing office. The report concurs with this Department's determination that there was not sufficient basis for taking formal disciplinary action against the employee.

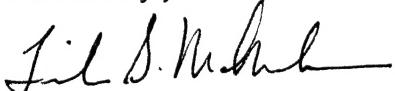
Your report agrees with our prior conclusion that the two top administrators of the Boys' and Girls' Club of Escondido were inappropriately prohibited from managing the Club's licensed programs. While we certainly agree with this finding, I believe it is necessary to state that our conclusion was based almost solely upon due process and administrative considerations. As alluded to in your report, the state of the law regarding a licensee's employee's due process rights was uncertain at the time the events in this matter transpired. The local district office manager failed to pursue this matter in such a manner as to give the two administrators all the due process rights to which they were entitled.

Further, while we did conclude that the administrators in question were inappropriately prohibited from their positions as managers over the licensed programs, there did, in fact, exist substantial cause for concern regarding the Club's administrators and cause existed for consideration of some action to bring the Club into regulatory compliance. As noted in your report, the administrators inappropriately bussed children away from the facility. They did this without the children's parents' knowledge or permission. This conduct was potentially dangerous to the children and was a deliberate act of dishonesty that was calculated to mislead the Department and to hide the Club's known capacity violations. This conduct alone clearly warranted that some action be taken against the Club by the Department. The local district office manager had ample reason to seek the removal of the administrators or request the denial of the Club's application for license renewal. Unfortunately, the way in which the district office manager went about this process was inappropriate.

Finally, while we do not agree that some of the examples cited in the report wholly support the contentions for which they are cited, it should be noted that the Department does agree with most of the determinations made in the report.*

In conclusion, we appreciate the opportunity to provide our comments on your report. If you have questions, please feel free to contact me at (916) 445-2077 or have your staff contact Mr. Fred Miller, Deputy Director, Community Care Licensing Division, at (916) 322-8538.

Sincerely,



LINDA S. McMAHON
Director

* The Office of the Auditor General's Comment: The examples cited in the report do not represent all of the information used to support our conclusions; they are merely examples.



CALIFORNIA STATE DEPARTMENT OF EDUCATION

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Bill Honig

Superintendent

of Public Instruction

August 19, 1988

Thomas W. Hayes, Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

RE: P-763

Dear Mr. Hayes:

Thank you for the opportunity to respond to your letter report regarding the Department of Social Services' licensing of the Boys' and Girls' Club of Escondido and our administration of our child development contract with the club. We are pleased that you agree with the results of our internal investigation of the administration of the club's contract. Based on the information available, you concluded as we did that disciplinary action against our employees was not warranted.

We realize that your report as regards this Department's actions focused only on the complaint of former club officials about one of the conditions placed on the 1986-87 contract. We agree that the condition regarding "management structure" was inappropriate. However, our internal investigation further concluded that there was sufficient reason for our initial decision not to renew the club's contract for 1986-87. That decision was based in part on the misleading and conflicting information provided by club officials about licensed capacity and the whereabouts of children (the busing incident cited in your report). Our subsequent decision to place the club on conditional status was also supported by unresolved noncompliance items. We are pleased that the club was able to quickly demonstrate compliance with program requirements and now has an unconditional contract.

We also note that both our internal investigation and your review were prompted by complaints by two former club officials who had no connection with the club's operation at the time they filed their complaints. We do acknowledge that, as a result of our internal investigation of this matter, we have improved our contract process overall, including the procedure for annual contract review. These procedures along with other contracting safeguards help protect the health and safety of children served in child development programs funded by this Department.

Sincerely,

William D. Dawson
Executive Deputy Superintendent